
OVERVIEW

Adoption may only be considered as a permanency plan for the Indian child when the termination of parental rights provision in ICWA/MIFPA can be met. In cases of conflict between the Adoption and Safe Families Act (ASFA) and the Indian Child Welfare Act (ICWA)/Michigan Indian Family Preservation Act (MIFPA), the requirements of ICWA/MIFPA apply.

An adoptive placement is subject to the placement preferences in ICWA/MIFPA.

PRE-ADOPTIVE PLACEMENT

Case Conference/Family Team Meeting (FTM)

The caseworker must hold a case conference or FTM before the agency makes a recommendation to the court for consent to adoption. The appropriate tribal or Indian representatives must be invited to this case conference or FTM.

NOTICE OF INDIAN CHILD ADOPTION

When conducting a permanency planning hearing or petitioning the court for adoption for any Indian child who is a permanent court or an MCI ward under the department's supervision, complete form DHS-120, American Indian/Alaska Native Indian (AI/AN) Child Welfare Case Notification form and MDHHS-5598, American Indian/Alaska Native (AI/AN) Child Tribal Enrollment/Eligibility Verification form; and all required notice attachments (petition, mailing recipient contact list, etc.) and send **by registered mail with return receipt to all** of the following:

- Parent(s).
- Indian custodian(s), if any.
- Tribe(s), when known or upon receipt of verification from the Midwest Bureau of Indian Affairs of the Indian ancestry of that tribe.

- Midwest Bureau of Indian Affairs (as designated for Michigan by the Secretary of the Interior); and also, if specific tribe is undetermined and/or multiple tribes are noticed.
- Bureau of Indian Affairs regional office specific to the tribe/state; if tribe is not located in the Midwest Bureau of Indian Affairs region.
- If a specific tribe is undetermined, notification must also be sent [Addressed to the ICWA Designated Tribal Agent for Service of Notice per Federal Register (81 FR 10887)] to:
 - Tribe(s) located in the county where the offense against the child occurred, in which the offense committed by the juvenile occurred, **and** in which the minor is physically present; **or**
 - The tribe(s) located in the county the incident occurred and in which the minor is physically present.

Notification of hearing to terminate parental rights must be received by all those listed above at least 10 calendar days before the hearing date.

A copy of the DHS-120, MDHHS-5598, other required notice attachments, and return receipt must be filed in the case record and with the court of jurisdiction. Failure to complete proper notice may jeopardize and nullify the court proceedings

ADOPTIVE PLACEMENT

Adoptive placement must not be made pending a determination of the child's Indian status.

REFERRAL TO A CHILD PLACING AGENCY FOR ADOPTIVE PLACEMENT

Upon receipt of court orders terminating parental rights, caseworkers must consult (or document attempts to consult) with the tribe to obtain their recommendation on which child placing agency should provide adoption services for their children; see [FOM 722-07D Permanency Planning-Adoption](#).

If a child's Indian status cannot be verified, but the Indian child's adoptive evaluation indicates placement with an Indian family is in the Indian child's best interest, the adoptive evaluation and ICWA/MIFPA placement preference recommendations for the child should be provided in the referral to the child placing agency.

Child Placement Agency Referral

A referral to a child placement agency should include:

- The initial and updated social history.
- An affidavit of parental request or denial for anonymity (DHS-1919, Parent's Consent/Denial to Release Information to Adult Adoptee) must be attached, when appropriate.
- Information concerning the interest of the Indian child's foster parent(s) in adopting the Indian child.
- Information on siblings.
- The Indian child's racial status other than Indian.
- Other factors that might affect the placement decision.

Child Placing Agency Response

The child placing agency must respond in writing by indicating:

- They have a family available and anticipate placement within sixty days; or
- They do not have a family available, but they expect to recruit an appropriate family for placement. The response must indicate the timeframe for recruiting an appropriate family; or
- The Indian child is not appropriate for placement by the agency, and they are declining the referral.

When a child placing agency has assessed an Indian child as being inappropriate for placement with their agency, the agency must return the referral along with written comments as to why placement was not possible.

**VACATING AN
ADOPTION ORDER
THROUGH FRAUD
OR DURESS**

After the entry of a final order of adoption of an Indian child in any state court of competent jurisdiction, a parent who wishes to withdraw consent on the grounds that consent was obtained through fraud or duress, may petition the court to vacate the decree. Upon a finding that the consent was obtained through fraud or duress, the court must vacate the adoption order and return the Indian child to the parent(s).

Notification of vacated Indian child adoptions should be sent to the parent(s) and tribe(s) (25 CFR 23.139).

No adoption that has been effective for two years or more may be invalidated under the provisions of this subsection unless otherwise permitted under state.

**Restoration of
Custody to Parent**

The caseworker must notify biological parent(s) of their right to petition the court for the restoration of custody of the Indian child and tribe(s), "whenever a final order of adoption has been vacated or set aside, or the adoptive parents voluntarily consent to the termination of their parental rights to the child under the care and supervision of MDHHS" (25 CFR 23.139).

**RELEASE OF INDIAN
ADOPTION
RECORDS**

Adoption records must be released upon application by an adopted Indian person over the age of 18 years, who was the subject of an adoptive placement, and was a ward of the state. The Michigan Department of Health and Human Services (MDHHS) and/or court of jurisdiction must provide information to the applicant regarding the tribal affiliation, if any, of the Indian person's biological parent(s) and such other information as may be necessary to protect any rights flowing from the Indian individual's tribal relationship.

Upon the request of an adopted person over age 18, the adoptive parents or foster care parents, an Indian tribe, or the Secretary of Interior shall disclose such information as may be necessary for the enrollment of the Indian child in the tribe in which the child may be

eligible or for determining any rights or benefits associated with membership (25 USC 1917 & 1951).

LEGAL BASIS

Adoption and Safe Families Act, 42 USC 601 et seq.

Bureau of Indian Affairs (BIA) ICWA Final Rule, 25 CFR 23.

Indian Child Welfare Act, 25 USC 1901 et seq.

Michigan Indian Family Preservation Act, MCL 712B. 1 - 41.